

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES J. McNULTY,

Plaintiff

v.

GAP, INC.,

Defendant

05 1 1250 NMG

Civil Action No.

RECEIPT #

AMOUNT \$

SUMMONS ISSUED

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK.

DATE

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS:

PLEASE TAKE NOTICE the Defendant, Gap, Inc., hereby serves notice of removal of
the above-entitled action to this Court and makes the following showing in support of such
removal:

PLEADINGS AND PROCEEDINGS TO DATE

1. On or about May 19, 2005, an action was commenced in the Barnstable Division
of the District Court Department of the Commonwealth of Massachusetts, entitled James J.
McNulty v. Gap, Inc., Civil Action No. 0525CV0455, by the filing of a Summons and
Complaint, copies of which are attached hereto as Exhibit A.

2. The first date upon which the Defendant received a copy of said Complaint was
May 26, 2005. The foregoing Summons and Complaint constitute all the process, pleadings, and
orders received by the Defendant to date. No further proceedings have occurred in the state
action.

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332
because there is diversity of citizenship, all of the parties being of different states. In Paragraph

1 of Plaintiff's Complaint, Plaintiff states that he is a resident of the Commonwealth of Massachusetts. Gap, Inc. is a corporation incorporated in Delaware and with its principal place of business in California. Further, the sum allegedly in controversy exceeds the \$75,000.00 jurisdictional prerequisite, exclusive of interest and costs.

4. Accordingly, this action is removable to this Court under 28 U.S.C. § 1441.

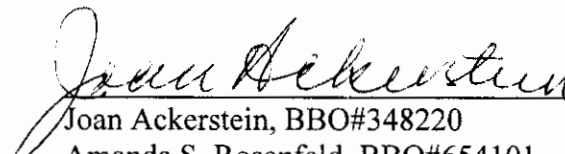
5. Defendant will notify the Barnstable Division of the District Court Department of the Commonwealth of Massachusetts and the Plaintiff of this Notice of Removal by filing with the court a Notice of Filing of Notice of Removal. A copy of that Notification, which will be sent to the Barnstable Division of the District Court Department of the Commonwealth of Massachusetts by first-class mail today, is attached hereto as Exhibit B.

WHEREFORE, Defendant prays that the above action pending against it in the Barnstable Division of the District Court Department of the Commonwealth of Massachusetts, Civil Action No. 0525CV0455, be removed therefrom to this Court.

Respectfully submitted,

GAP, INC.

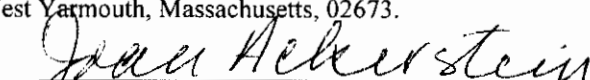
By its attorneys,


Joan Ackerstein, BBO#348220
Amanda S. Rosenfeld, BBO#654101
Jackson Lewis LLP
75 Park Plaza
Boston, MA 02116
(617) 367-0025

June 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2005, a copy of the foregoing was served by first class mail on pro se Plaintiff James J. McNulty, 14 Wildwood Path, West Yarmouth, Massachusetts, 02673.


Joan Ackerstein
Jackson Lewis LLP

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) James J. McNulty v. Cap, Inc.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Joan AckersteinADDRESS Jackson Lewis LLP, 75 Park Plaza, Boston, MA 02116TELEPHONE NO. 617-367-0025

05 11250 NMG

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James J. McNulty

DEFENDANTS

Gap, Inc.

(b) County of Residence of First Listed Plaintiff Barnstable
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known) Joan Ackerstein
Jackson Lewis LLP, 75 Park Plaza
Boston, MA 02116 617-367-0025

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332

VI. CAUSE OF ACTION

Brief description of cause:

Disability discrimination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

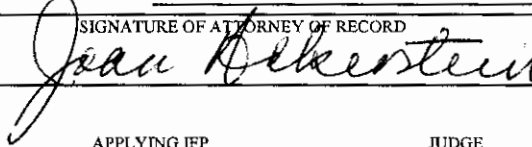
JUDGE

DOCKET NUMBER

DATE

June 15, 2005

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Uniform Form DCM-13
AR-75

323775

Trial Court of the Commonwealth
District Courts of Massachusetts

RECEIVED

MAY 26 2005

GENERAL COUNSEL

BARNSTABLECivil Action No. 0525CV0455SUMMONS
(Rule 4)To defendant GAP, INC. of 2 FOLSON ST. SAN FRANCISCO, CA. 9410

You are hereby summoned and required to serve upon JAMES J. MCNULTY plaintiff's attorney, whose address is 14 WILDWOOD PATH WEST YARMOUTH, MA 02679 a copy of your answer to the complaint which is herewith served upon you, within 20 days after service of this summons, exclusive of the day of service. You are also required to file your answer to the complaint in the office of the Clerk of this court either before service upon plaintiff's attorney, or within 5 days thereafter. If you fail to meet the above requirements, judgment by default may be rendered against you for the relief demanded in the complaint. You need not appear personally in court to answer the complaint.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrences that is the subject matter of the plaintiff's claim or you will be barred from making such claim in any other action.

WITNESS JOSEPH J. REARDONPresiding Justice, on 5-19-05

(SEAL)

William C. O'Rourke
Clerk

- Note: (1) When more than one defendant is involved, the names of all defendants should appear in the action. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
- (2) The number assigned to the complaint by the Clerk at commencement of the action should be affixed to this summons before it is served.

RETURN OF SERVICE

On (date of service) I served a copy of the within summons, together with a copy of the complaint in this action, upon the within named defendant, in the following manner (see Rule 4 (d) (1-5)):

(signature)

(name and title)

(address)

- Note: (1) The person serving the process shall make proof of service thereof in writing to the court and to the party or his attorney, as the case may be, who has requested such service. Proof of service shall be made promptly and in any event within the same time during which the person served must respond to the process. Rule 4(f).
- (2) Please indicate when you make service on defendant in the box on the copy served on the defendant, on the original returned to the court and on the copy returned to the person requesting service or his attorney.
- (3) If service is made at the last and usual place of abode, the officer shall forthwith mail first class a copy of the summons to such last and usual place of abode, and shall set forth in the return the date of mailing and the address to which the summons was sent (C.L. c. 223, sec. 31).

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

DISTRICT COURT DEPARTMENT
CIVIL ACTION NO. 0525 CV 0455

JAMES J. McNULTY,
PLAINTIFF

VS.

GAP, INC.,
DEFENDANT

1. Plaintiff, James J. McNulty is a natural person residing at 14 Wildwood Path, West Yarmouth, Ma., Barnstable County, Massachusetts.
2. Defendant is a corporation doing business as Gap, Inc. at 2 Folsom Street, San Francisco, Ca. 94105.
3. On or about October 4, 2000, the plaintiff James J. McNulty returned to his employment as Associate Manager of the Gap stores in Hyannis, Ma. . After suffering a brain injury, with resulting seizure disorders, short term memory loss, severe headaches, balance and vision problems, and other brain injury \ seizure related disorders which escalated over the next two years as a result of emotional distress negligently inflicted by the defendant.
4. The defendant negligently and carelessly inflicted emotional distress so as to cause the plaintiff to become physically disabled.
5. As a direct and proximate result thereof, the plaintiff was prevented from carrying out the duties of his occupation to the best of his ability

6. Upon returning to work in 2000, the plaintiff was restricted to twenty hours per week by his neurosurgeon. The plaintiff worked two weeks at 20 hours and then was told by the General Manager that he could not afford to pay him his full salary and that he would have to work 40 hours regardless of the doctors return to work authorization.
7. The plaintiff was given no accommodations regarding his disability.
8. The defendant frequently joked to the other managers whether the plaintiff would remember what needed to be done.
9. When the new store was opening the plaintiff was required to work 60 hours.
10. In spite of the fact that the doctor insisted that he have at least 8 hours sleep, he was scheduled for 2 P.M. to 11 P.M. and on the following morning from 7A.M. to 4 P.M. which happened frequently.
11. The plaintiff was restricted from climbing and the defendant assigned him to climbing 7 ft. high rolling racks without ladders to dispose of fixtures on top shelves.
12. In the first review the plaintiff had received in the first three years, he was supposed to have had a review each year, he frequently referred to his disabilities and how his entire performance was affected by this.
13. The plaintiffs personal files were made known to the entire staff, resulting in loss of respect for the plaintiff.
14. The last review given to the plaintiff on May 20, 2002 resulted in an ultimatum that could result in a termination of employment which brought on a seizure in front of the defendant that turned into a grand mal seizure and he hit

his head repeatedly on the floor and was taken to the hospital without being able to speak or see. The plaintiff has been permanently disabled since.

WHEREFORE, the plaintiff demands judgment against the defendant in an amount which the Court would deem fair and reasonable.

A trial by jury is demanded upon all issues.

Respectfully submitted,


Pro Se

Date:

July 19, 2005

Information obtained is for Service of Process ONLY

Defendants

(Person to be served) **GMP, Inc**

Home Address

2 Folsom St

SAN FRANCISCO, CA 94105

Work Address (if known)

2 Folsom St

SAN FRANCISCO, CA 94105

P.O. Box

Best time to serve

Any other helpful information: Description, Phone Number(s)

Website(s)

Plaintiff **JAMES J. McNULTY**

Mailing Address

**14 WILLOWOOD PARKWAY
SAN FRANCISCO, CA 94115**

Phone Number

**1-508-790-9303
1-508-790-4658**

STATEMENT OF DAMAGES SL 1995, c. 35B, § 5	DATE FILED (to be done by Clerk) 5-19-05	DOCKET NO. (to be done by Clerk) 0525 CV 0455	Trial Court of Massachusetts District Court Department
PLAINTIFF(S) JAMES J. McNULTY		DEFENDANT(S) GAP, INC.	
INSTRUCTIONS: THIS FORM MUST BE COMPLETED AND FILED WITH THE COMPLAINT OR OTHER INITIAL PLEADING IN ALL DISTRICT COURT CIVIL ACTIONS SEEKING MONEY DAMAGES IN BARNSTABLE, PLYMOUTH, BRISTOL, DUKES, ESSEX, FRANKLIN, HAMPSHIRE, MIDDLESEX, NANTUCKET AND NORFOLK COUNTIES.		BARNSTABLE DISTRICT COURT	

TORT CLAIMS	AMOUNT
Documented medical expenses to date:	
1. Total hospital expenses:	\$ APP-50,000.00
2. Total doctor expenses:	\$ 5,000.00 APP
3. Total chiropractic expenses:	\$ N/A
4. Total physical therapy expenses:	\$ N/A
5. Total other expenses (Describe):	\$ UNK
SUBTOTAL:	\$ 55,000.00
6. Documented lost wages and compensation to date:	\$ 116,000.00
7. Documented property damages to date:	\$ N/A
8. Reasonably anticipated future medical and hospital expenses:	\$ UNK
9. Reasonably anticipated lost wages:	\$ UNK
10. Other documented items of damage (Describe): PAIN & SUFFERING	\$ 3-Million
3. Brief description of Plaintiff's injury, including nature and extent of injury (Describe): BRAIN INJURY- SEIZURE DISORDERS SEVERE HEADACHES BALANCE- VISION PROBLEMS- SHORT TERM MEMORY LOSS- BLEEDING FROM BRAIN	
For this form, disregard double or triple damage claims; indicate single damages only.	TOTAL: \$ 3,171,000.00

CONTRACT CLAIMS:	AMOUNT
Provide a detailed description of claim(s):	\$
	\$
	\$
For this form, disregard double or triple damage claims; indicate single damages only.	TOTAL: \$

ATTORNEY FOR PLAINTIFF (OR IF SELF PLAINTIFF) James J. McNulty 5-19-05 Signature PRO-SE Date JAMES J. McNULTY Print or Type Name	DEFENDANT'S NAME AND ADDRESS GAP GAP, INC. 2 FOLSON ST. SAN FRANCISCO CA 94105
14 WILDWOOD PATH RECEIVED TIME JUN. 6. 3:17PM	

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

DISTRICT COURT DEPARTMENT

JAMES J. MCNULTY,

Plaintiff

v.

Civil Action No. 0525CV0455

GAP, INC.,

Defendant

NOTICE OF FILING OF NOTICE OF REMOVAL

To: Civil Clerk's Office
Barnstable Division of the District Court Department
Courthouse, Main Street, Route 6A
P.O. Box 427
Barnstable, MA 02630

PLEASE TAKE NOTICE that a Notice of Removal in the above action from the Barnstable Division of the District Court Department has been duly filed in the U.S. District Court for the District of Massachusetts. Attached hereto is a copy of that Notice of Removal.

Respectfully submitted,

GAP, INC.
By its attorneys,

Joan Ackerstein, BBO#348220
Amanda S. Rosenfeld, BBO#654101
Jackson Lewis LLP
75 Park Plaza
Boston, MA 02116
(617) 367-0025

June __, 2005

CERTIFICATE OF SERVICE

I hereby certify that on June __, 2005, a copy of the foregoing was served by first class mail on pro se Plaintiff James J. McNulty, 14 Wildwood Path, West Yarmouth, Massachusetts, 02673.

Jackson Lewis LLP